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February 12, 2003

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TN REGULATORY AUTHORITY
DOCKET ROOM

VIA FEDERAL EXPRESS

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Attention: Docket Room

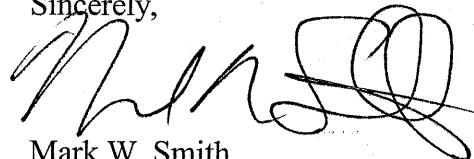
Re: Complaint of US LEC of Tennessee, Inc.
Docket No. 02-00562

Dear Chairman Kyle:

Hearing Officer Wike has requested that we furnish the docket room with a duplicate set of the Supplemental Memorandum in Support of Motion for Summary Judgment and Statement of Undisputed Material Facts that we forwarded via Federal Express on January 27, 2002. Accordingly, we have enclosed one copy of each pleading for filing plus 13 copies for circulation within the Authority. We have also enclosed an additional set of copies and would appreciate your returning a time-stamped copy to us for our files here.

Please contact me if you need any further information.

Sincerely,



Mark W. Smith
For the Firm

MWS/gb

cc: The Honorable Jonathan N. Wike (w/enc.)
Henry Walker, Esq. (w/enc.)
Guy M. Hicks, Esq. (w/enc.)
Mr. Harold E. DePriest
Mr. Ronald N. Fugatt

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RE: COMPLAINT OF US LEC OF :
TENNESSEE, INC. AGAINST : Docket No. 02-00562
ELECTRIC POWER BOARD OF :
CHATTANOOGA :

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Comes now the Electric Power Board of Chattanooga ("EPB"), an independent board of the City of Chattanooga, Tennessee and, without waiver of any defenses, privileges or claims that it may have, files this Supplemental Memorandum in Support of Motion for Summary Judgment and hereby renews its prior request that the Hearing Officer grant summary judgment in favor of EPB on all aspects of US LEC's Complaint. EPB files a Statement of Undisputed Material Facts herewith.

As discussed in greater detail below, EPB submits that there are no genuine issues of material fact and that EPB is entitled to judgment as a matter of law on each of the allegations of US LEC's Complaint because (i) EPB Telecommunications is an appropriate name for the Telecommunications Division of EPB; (ii) EPB has not denied any third parties access to its underground facilities and EPB Telecommunications has arranged for its own building access; (iii) EPB's internal auditors have issued internal audit reports and these reports are available to the Authority upon request; and (iv) there is no legal or factual support for US LEC's attempts to use T.C.A. § 65-4-124 to require that EPB Telecommunications provide wholesale services to US LEC on an unbundled basis.

In the interest of efficiency and economy, EPB respectfully requests that the Hearing Officer continue to hold the procedural schedule in abeyance until EPB's motion is resolved.

I. STATEMENT OF THE CASE

On May 15, 2002, US LEC of Tennessee, Inc. ("US LEC") filed a Complaint (the "Complaint") against EPB alleging (i) that EPB Telecommunications should not use "EPB" in its name (Complaint, ¶ 6); (ii) that EPB has refused an unidentified third party access to its underground facilities (Complaint ¶ 7); and (iii) that EPB has failed to issue internal audit reports and file them with the TRA (Complaint ¶ 8). On June 10, 2002, EPB filed a Motion in Opposition to Commencement of a Contested Case or Motion to Dismiss (the "Motion to Dismiss"), and on June 11, 2002, the Directors appointed the General Counsel or his designee to act as Hearing Officer in this case. On June 18, 2002, US LEC filed its Response to Motion to Dismiss ("Response"). Thereafter, the parties commenced discovery.

On September 4, 2002, the Hearing Officer held a pre-hearing conference and heard oral argument on EPB's Motion to Dismiss. By Order dated September 12, 2002 (the "Motion to Dismiss Order"), the Hearing Officer denied EPB's Motion to Dismiss, finding that the Complaint "alleges sufficient facts in connection with causes of action which, at least on their face, are appropriately before the Authority." [Motion to Dismiss Order at p. 9]. The Hearing Officer held in abeyance EPB's argument that the Motion to Dismiss should be treated as a motion for summary judgment and permitted EPB to renew and, if desired, supplement its prior Motion to Dismiss as a motion for summary judgment.

On September 20, 2002, US LEC amended its Complaint to include a fourth general cause of action alleging that EPB has refused to interconnect with US LEC and to provide telecommunications features and services to US LEC on an unbundled and non-discriminatory basis. Since the September 20, 2002 amendment to US LEC's Complaint, the parties have

agreed to suspend the procedural scheduled pending resolution of certain discovery matters, and US LEC has had the opportunity to engage in further discovery.

EPB now desires to renew its prior Motion to Dismiss for the Hearing Officer's consideration as a motion for summary judgment, and EPB further desires to supplement that Motion as provided herein.

II. STANDARD OF REVIEW

The Hearing Officer indicated in the Motion to Dismiss Order that Authority Rule 1220-1-2-.22(1) provides that in any contested case, the Authority or Hearing Officer "may determine that there is no genuine issue as to any material fact," and the Hearing Officer concluded that it is reasonable for the Authority to approach a motion for summary judgment as would a court. Summary judgment is appropriate under Rule 56.04 of the Tennessee Rules of Civil Procedure when, "[t]he pleadings, depositions, Answers to Interrogatories, and admissions on file together with the Affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The party seeking summary judgment bears a burden of demonstrating that no genuine issue of material facts exists, but once the moving party satisfies that burden, the burden then shifts to the nonmoving party to set forth specific facts establishing that there are disputed, material facts creating a genuine issue to be resolved by the trier of fact. *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993). Rule 56.06 provides that the non-moving party cannot simply rely upon the pleadings, but must set forth specific facts showing that there is a genuine issue of material fact for trial.

EPB respectfully submits that US LEC is unable to carry its burden on each of the allegations of its Complaint.

III. ARGUMENT

A. EPB Telecommunications is an appropriate name for EPB's telecommunications division.

In Paragraph 9 of its Complaint, US LEC requested that the TRA "direct the telecommunications division to operate under a different name that has no relation to EPB and to make no reference to EPB in the division's promotional, advertising, and marketing material."

In the Motion to Dismiss, EPB contended that EPB Telecommunications is an appropriate name for EPB's telecommunications division. In its Response, US LEC contended that EPB's actions violated the cross subsidization prohibition in T.C.A. § 7-52-402, and US LEC further contended that EPB's actions violated the "separate identities" requirement under the Second Revised Proposed Conditions ("Proposed Conditions") referenced at page 5, footnote 2 of the Order Approving Application for a Certificate of Public Convenience and Necessity, Docket No. 97-07488 (May 10, 1999) (the "Certificate"). EPB submits that US LEC is wrong on both points. For the reasons previously outlined in the Motion to Dismiss and for the following supplemental reasons, the use of the name EPB Telecommunications does not violate T.C.A. § 7-52-402, and EPB has not violated the "separate identities" requirement of the Proposed Conditions.

The Authority granted the Certificate to EPB. At the outset, EPB observes that it would be entirely appropriate for the Telecommunications Division to operate in the name "EPB," as the Authority granted the Certificate to "EPB" and the "Electric Power Board of Chattanooga" nearly four years ago. Throughout the Certificate, the Authority refers to the Applicant as "EPB," and ordering clause number 1 provides quite plainly that "The Application of the Electric Power Board of Chattanooga is approved" [Certificate at p. 6]. Because the use of the name "EPB" would be wholly consistent with the Certificate, EPB's use of the name "EPB Telecommunications" is appropriate as well.

The name EPB Telecommunications is also proper. With respect to US LEC's contention that the use of the name EPB Telecommunications violates the cross-subsidization prohibitions under T.C.A. § 7-52-402, US LEC incorrectly attempts to stretch the requirements of that statute well beyond its intended effect. The terms of the Certificate, the provisions of the Proposed Conditions, and the provisions of the municipal telecommunications statutes, T.C.A. §§ 7-52-401 – 407, read as a whole all support EPB providing telecommunications service in the name EPB Telecommunications.

In the Certificate, the Authority acknowledged both the cross subsidy requirements of T.C.A. § 7-52-402, as well as the requirements of other provisions of the municipal telecommunications statutes. The Certificate also clearly indicates that the Authority was aware that EPB would establish a "Telecommunications Division" to provide telecommunications services. In Section 4 of Part II of the Certificate, the Authority acknowledged a proposed condition to EPB's Certificate, and that proposed condition plainly references the "Telecommunications Division" of "EPB". [Certificate at pp. 9 -10]. Additionally, both the Proposed Conditions and the Authority's summary of the Proposed Conditions explicitly reference the "telecommunications division" of EPB.

The Proposed Conditions filing, on its face, purports to provide "the essential methods that EPB should adopt to properly separate telecommunications from electric power data, provide assurance that subsidization does not occur, and to properly allocate costs." [Proposed Conditions at p. 3]. The very first line of the Section II of the Proposed Conditions, relating to the purpose of the Proposed Conditions, indicates that "EPB has formed a telecommunications service division to achieve organizational and accounting separate from its electric power service

operations,” and both “EPB” and the “telecommunications division” are referenced throughout the Proposed Conditions. [Proposed Conditions at p. 3]. For example,

- Section II of the Proposed Conditions provides that “[f]or the telecommunications division, EPB is establishing a telecommunications accounting system . . .” [Proposed Conditions at p.3];
- Section III of the Proposed Conditions addresses “[e]lectric services provided to the telecommunications division” and “costs assigned to and allocated between the electric system and the telecommunications division . . .” [Proposed Conditions at pp. 4-5];
- Section IV of the Proposed Conditions deals with affiliate transactions between “the electric utility system” and the “telecommunications division” [Proposed Conditions at pp. 6 – 7];
- Section V of the Proposed Conditions addresses balance sheet accounting issues for “the electric system” and the “telecommunications division,” and one subsection even specifically refers to “Plant Leased to Telecommunications Division” [Proposed Conditions at pp. 7 – 10];
- The “telecommunications division” is referenced in several provisions of Section VI of the Proposed Conditions relating to revenue and expense accounting; [Proposed Conditions at pp. 10 – 14];
- The code of conduct provisions under Section VII of the Proposed Conditions primarily address conduct of the “telecommunications division,” and the first entry (“Regulatory Compliance”), expressly references the “telecommunications division of EPB” [Proposed Conditions at pp. 14 – 17]; and
- The reporting requirements of Section VII apply to the “telecommunications division of the EPB” and “EPB” [Proposed Conditions at pp. 17 – 19].

Throughout the extensive proceedings surrounding the Authority’s issuance of the Certificate to EPB, EPB does not believe that it was ever suggested that EPB should (or even could) provide telecommunications services without being identified with “EPB.” Indeed, the provisions of the municipal telecommunications statutes, read as a whole, clearly indicate that the Tennessee General Assembly understood and intended that municipalities would be providing regulated telecommunications services through their electric systems.

T.C.A. § 7-52-401 is quite clear in its authorization to municipal electric systems. That statute plainly authorizes “[e]very municipality operating an electric plant” to provide telecommunications services, but the statute further provides that those municipalities are authorized “acting through the board or supervisory body having responsibility for the municipal electric plant” to provide these services. [T.C.A. § 7-52-401]. Each of the subsequent sections in T.C.A. §§ 7-52-402 – 407 similarly indicate that the authorization runs to the “municipality.”

Nowhere in the municipal telecommunications statutes did the General Assembly suggest – much less require – that a municipal electric system must hide its involvement in a municipal telecommunications project, as US LEC apparently now contends nearly four years after the Authority granted the Certificate to EPB. In addition to the obvious staleness of US LEC’s claim, US LEC’s argument violates the fundamental rule of statutory construction that the legislative intent or purpose of a statute is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the import of the language. *Worrall v. Kroger*, 545 S.W.2d 736, 738 (Tenn. 1977). US LEC’s strained argument fails this test.

There are no genuine issues of material fact, and the Authority should reject US LEC’s argument outright as a matter of law.

EPB has not violated the “separate identities” requirement under the Proposed Conditions. US LEC’s contention that EPB has violated the “separate identities” requirement under the Proposed Conditions is similarly without merit. As the plain language of the Proposed Conditions indicate, the “separate identities” requirement only applies to EPB’s joint offering of electric and telecommunications services to customers, and if anything, the “separate identities” requirement clearly establishes that all parties and the Authority clearly understood that “the

Electric Power Board of Chattanooga” (through its telecommunications division) would be offering telecommunications services. Had this not been the case, there would have been no need for this requirement in the first place.

The following “separate identities” requirement is located at page 16 of the Proposed Conditions:

Joint Marketing of Regulated [telecommunications] Services and Nonregulated [electric] Services – The electric system and the telecommunications division of the Electric Power Board of Chattanooga may jointly offer their respective products and services to customers provided that the customer is informed (a) of the separate identities of each and (b) that the products and services of the electric utility system are distinct and separately priced from the offerings of the telephone division and the customer may select one without the other.

[Proposed Conditions at p. 16].

More directly addressing US LEC’s contention, the plain language of this provision only applies in the case of EPB’s joint offering of regulated telecommunications services and non-jurisdictional electric services to prospective customers. US LEC has not alleged any case where EPB jointly offered the electric and telecommunications services together in violation of the requirements of this provision, and neither US LEC’s discovery responses nor the exhibits to its Complaint reveal any improper joint marketing activity. Nowhere in these materials is there any indication that EPB has jointly offered electric service and telecommunications service to a prospective customer at any time. Accordingly, because US LEC has not alleged any facts upon which a violation of the “separate identities” requirement could be based, this aspect of US LEC’s claim is also without merit.

Because the use of the name EPB Telecommunications is appropriate and because EPB has not engaged in any joint marketing activities in violation of the Proposed Conditions, this

aspect of US LEC's Complaint is wholly without merit, and the Authority should grant summary judgment in favor of EPB on these aspects of US LEC's claims.

B. EPB has not denied access to its underground facilities to any CLEC, and EPB Telecommunications has obtained its own building access arrangements.

In Paragraph 7 of its Complaint, US LEC asserted "on information and belief" that EPB had denied non-affiliated carriers access to EPB's rights of way and building entrance facilities. With its Motion to Dismiss, EPB filed the affidavit of Stephen W. Lawrence indicating that EPB had not received any third party requests for access to its underground facilities since the Authority granted the Certificate. For the simple reason that EPB had not received any requests for access, EPB contended in the Motion to Dismiss that EPB could not have denied access as US LEC alleged in its Complaint. In its Response, US LEC contended that US LEC needed to conduct discovery to determine whether EPB Telecommunications was improperly using EPB's electric system to gain building access. Thereafter, EPB filed the affidavit of Williams E. Chapman, Jr., which states that the Telecommunications Division of EPB has obtained its own permission to access office buildings for its operations, and Mr. Chapman's affidavit further states that EPB Telecommunications has paid EPB to install fiber in conduit that EPB Telecommunications rents from EPB.

Since the filing of Mr. Chapman's affidavit, EPB has provided additional detail as to its arrangements regarding pole attachments, building entrance facilities, rights of way and easements, conduit, and "other instrumentalities and devices of EPB." [See Electric Power Board of Chattanooga's Supplemental Response to Discovery Request of US LEC of Tennessee, Inc. at Response No. 17 (December 30, 2002)]. US LEC has not produced any evidence indicating otherwise. Because the undisputed proof in this case shows that EPB has not denied any CLEC access to EPB's underground facilities and because the undisputed proof also shows

that EPB Telecommunications has negotiated its own building access arrangements, summary judgment is therefore appropriate on this point.

C. EPB's internal auditors have issued internal audit reports and these audit reports are available to the Authority upon request.

There is no ambiguity in the Proposed Conditions relating to EPB's issuance of internal audit reports. While EPB is not required to automatically file the internal audit reports, those reports are available to the Authority upon request.

In the Motion to Dismiss, EPB submitted that its internal auditors have, in fact, issued internal audit reports but that EPB is not required to automatically file those audit reports with the TRA under the Proposed Conditions. In its Response, US LEC objected on the basis that EPB had not filed those audit reports with the TRA, and US LEC claimed that a hearing is necessary to resolve any ambiguity in the Proposed Conditions regarding any annual filing requirements for the internal audits. Since that time, EPB has submitted audit reports for fiscal years 2000 and 2001 in response to US LEC's discovery request. [See Electric Power Board of Chattanooga's Response to Discovery Request of US LEC of Tennessee, Inc., Response No. 10 (September 20, 2002)]. The TRA staff has also subsequently requested the internal audit report for fiscal year 2002, which EPB furnished by letter dated January 2, 2003, and this report is also a matter of public record in Docket No. 97-07488.

Clearly, the Authority has an effective mechanism to obtain and review these annual internal audits under the Proposed Conditions. As a matter of law, the Proposed Conditions are clear on this point and no further clarification is required. Summary judgment in favor of EPB is therefore appropriate on this point as well.

D. There is no legal or factual support for US LEC's claim under T.C.A. § 65-4-124.

On September 20, 2002, US LEC moved to amend its Complaint to assert a claim that EPB had refused to interconnect with US LEC *and* to lease US LEC "on reasonable terms and conditions, space on EPB's transmission facilities" [Amendment of Complaint of US LEC at p. 1 (September 20, 2002)]. In support of this motion, US LEC asserted that T.C.A. § 65-4-124(a) requires that US LEC "shall, to the extent it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other telecommunications service providers," including EPB Telecommunications. Clearly, the crux of US LEC's claim is its claim for unbundled services from EPB, rather than a physical interconnection with EPB Telecommunications standing alone. There is no legal or factual support for US LEC's demand for such services.

From a legal standpoint, US LEC's claim is flawed in several respects. First, the federal Telecommunications Act of 1996 and the Federal Communications Commission's regulations expressly preclude US LEC's claim. Unlike the preemption issues that the Court of Appeals addressed in BellSouth Telecommunications, Inc. v. Greer, 972 S.W.2d 663, 671 – 672 & n. 22 (1997), there are conflicts between the provisions of T.C.A. § 65-4-124 and 47 U.S.C. § 251 relating to interconnection and other requirements of local exchange carriers like EPB Telecommunications. More specifically, the federal Telecommunications Act only imposes the obligation to provide unbundled network elements on incumbent local exchange carriers, and there is no similar obligation on local exchange carriers like EPB Telecommunications. [47 U.S.C. § 251 (b) & (c); see 47 U.S.C. § 251(d)(3) & (h) (addressing state access jurisdiction and establishing procedure for treatment of comparable carriers as incumbents)]. Additionally, the FCC has promulgated a rule at 47 CFR § 51.223 that expressly requires FCC approval before a

State may impose ILEC obligations under 47 U.S.C. § 251 on a local exchange carrier like EPB, and to EPB's knowledge, no such approval has been obtained from the FCC.

A second and equally significant legal issue associated with US LEC's claim arises from the broad change that US LEC apparently seeks in the Authority's application of Tennessee law. EPB is unaware of any regulation or order of the Authority that utilizes T.C.A. § 65-4-124 to require that CLECs provide unbundled services to other CLECs. Such a broad policy issue (even if it were otherwise valid and the preemption principles identified above did not apply) would more properly be handled through a rulemaking proceeding, rather than a contested case proceeding, under the principles of Tennessee Cable Television Association v. Tennessee Regulatory Authority, 844 S.W.2d 151 (Tenn. Ct. App. 1992). EPB is mindful of the provisions of T.C.A. § 65-4-124(b) indicating that the Authority must "promulgate rules and issue orders," and that the Authority has implemented some of these requirements by Order, such as in the Avoidable Cost Docket, Docket No. 96-01331. These issues notwithstanding, the application of T.C.A. § 65-4-124(a) to competitive local exchange carriers some eight years after the General Assembly enacted Chapter 408 of the Public Acts of 1995 – and some seven years after this regulatory authority was required to be exercised – is such a fundamental policy shift that a rulemaking proceeding would be required to address the policy and legal issues associated with US LEC's request.

EPB submits that it is unnecessary for the Authority to resolve either of these legal questions because of one simple reason: the only evidence that US LEC has offered in this case indicates that it is not presently financially feasible for EPB to provide the requested services. Because T.C.A. § 65-4-124(a) applies only to the extent "financially feasible," and because the only evidence before the Authority indicates that these services are not presently "financially

feasible” for EPB Telecommunications, the Authority can and should grant EPB’s motion for summary judgment on this question of fact.

In its response to EPB’s discovery requests, US LEC produced a series of email communications between EPB Telecommunications’ Bill Chapman and representatives of US LEC. In relevant part, Mr. Chapman clearly states:

I have reviewed your request and do not believe that it would be feasible for EPB Telecommunications to provide these services. The services . . . would require a substantial capital outlay on EPB Telecommunications’ part, and I simply don’t have that money in my budget . . . [and] even if we did have the money, I don’t think that we would be able to provide competitively priced wholesale services.

[US LEC Response to EPB Discovery Request No. 9].

Thus, US LEC’s only evidence plainly reveals that the requested services are simply not financially feasible for EPB Telecommunications to provide at this time.

Because US LEC’s claim for unbundled services is without legal or factual support, the Authority should grant EPB motion for summary judgment on this point as well.

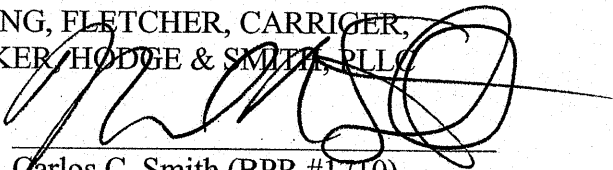
IV. CONCLUSION

For the foregoing reasons, the Authority should grant EPB’s motion for summary judgment as to each element of US LEC’s Complaint.

Respectfully Submitted,

STRANG, FLETCHER, CARRIGER,
WALKER/HODGE & SMITH, PLLC

By:


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William C. Carriger (BPR # 1778)

Mark W. Smith (BPR #16908)

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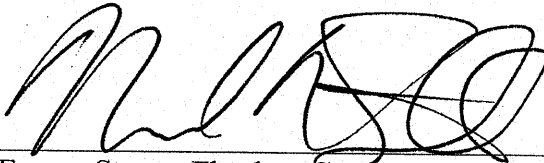
CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

Henry Walker
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, Tennessee 37201

This 27th day of January, 2003.


For: Strang, Fletcher, Carriger, Walker,
Hodge & Smith, PLLC

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RE: COMPLAINT OF US LEC OF :
TENNESSEE, INC. AGAINST : Docket No. 02-00562
ELECTRIC POWER BOARD OF :
CHATTANOOGA :

STATEMENT OF UNDISPUTED MATERIAL FACTS

Comes now the Electric Power Board of Chattanooga ("EPB"), an independent board of the City of Chattanooga, Tennessee, and in order to assist the Hearing Officer in ascertaining whether there are any material facts in dispute in EPB's pending Motion for Summary Judgment, identifies the following material facts as to which EPB contends there is no genuine issue for trial:

1. The electric system and the telecommunications division of the Electric Power Board of Chattanooga have not jointly offered their respective products and services to customers. [EPB's Response to Discovery Request of US LEC of Tennessee, Inc., Response No. 12; US LEC of Tennessee, Inc.'s Response to Electric Power Board of Chattanooga's First Interrogatories and Request for Production of Documents, Response Nos. 3 & 4; Complaint of US LEC of Tennessee, Inc., Exhibit 1].

2. EPB has not denied access to its underground electric system facilities to any CLEC. [Affidavit of Stephen W. Lawrence; EPB's Supplemental Response to Discovery Request of US LEC of Tennessee, Inc., No. 17].

3. EPB Telecommunications has obtained its own building access arrangements. [Affidavit of William E. Chapman, Jr.].

4. EPB's internal auditors have prepared internal audit reports for fiscal years 2000, 2001, and 2002. [EPB's Response to Discovery Request of US LEC of Tennessee, Inc., Response No. 10; TRA Docket No. 97-07488].

5. It is not presently financially feasible for EPB Telecommunications to provide the unbundled services that US LEC has requested. [US LEC Response to EPB Discovery Request No. 9].

Respectfully Submitted,

STRANG, FLETCHER, CARRIGER,
WALKER, HODGE & SMITH, PLLC

By: 

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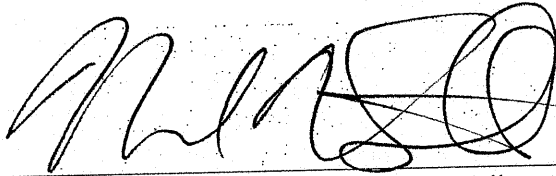
CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

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Guy M. Hicks
BellSouth Telecommunications, Inc.
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This 27th day of January, 2003.



For: Strang, Fletcher, Carriger, Walker,
Hodge & Smith, PLLC